

FILED

MAY 21 2020

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES FIRE INSURANCE
COMPANY,

Plaintiff/Counter-Defendant,

vs.

GREATER MISSOULA FAMILY
YMCA,

Defendant/Counter-Claimant.

CV 19-21-M-DWM

ORDER

On May 7, 2020, the Court determined that an award of attorneys' fees and costs was appropriate under Montana law and requested that Defendant Greater Missoula Family YMCA ("YMCA") submit documentation supporting an award amount. (Doc. 40.) On May 8, before a final amount was awarded, Plaintiff United States Fire Insurance Company ("US Fire") filed a notice of appeal, appealing both this Court's April 9, 2020 Judgment and the May 7, 2020 Fees Award. (Doc. 41.) US Fire now argues that its notice divested this Court of jurisdiction over a final amount determination. (Doc. 46.) US Fire is incorrect.

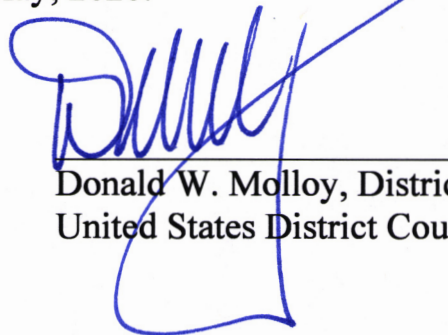
Generally, the filing of a notice of appeal divests a district court of jurisdiction with respect to the issues on appeal. *See Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). However, "an order

‘finding [a party] liable for attorney’s fees and costs but without determining the specific amount of that award is not a final and appealable order.’” *Jensen Elec. Co. v. Moore, Caldwell, Rowland & Dodd, Inc.*, 873 F.2d 1327, 1329 (9th Cir. 1989) (quoting *Gates v. Central Sts. Teamsters Pension Fund*, 788 F.2d 1341, 1343 (8th Cir. 1986)). Because US Fire’s appeal of the fees award was premature, the Court can, and will, determine the amount to be awarded.

YMCA requests an award of \$78,110.50 in attorneys’ fees and \$2,141.95 in costs, or a total of \$80,252.45. (Doc. 42.) US Fire does not object to either the reasonableness of the rates or the hours billed but does object to the award of “fees-for-fees.” (Doc. 46.) US Fire argues YMCA’s fee award should be reduced by \$5,221.00 for the time it spent both litigating its entitlement to fees and preparing its request in response to the Court’s May 7 Order. (*Id.*) The Court agrees. *See Swapinski v. Lincoln Cty.*, 357 P.3d 329, 333 (Mont. 2015).

Accordingly, IT IS ORDERED that attorneys’ fees and costs are awarded to YMCA in the amount of \$75,031.45.

DATED this 21st day of May, 2020.



Donald W. Molloy, District Judge
United States District Court